



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable William J. Lawson
Secretary of State
Austin, Texas

Attention: Mr. Abner L. Lewis
Head of Charter Division

Dear Sir:

Opinion No. O-5036

Re: Most Worshipful King Solomon
Grand Lodge Ancient Free and
Accepted Masons, Queen Esther
Grand Chapter, Order of the
Eastern Star and Daughters of
the Sphinx.

Your letter of January 14, 1943, requesting the opinion of this department on the questions stated therein regarding the above mentioned matter reads as follows:

"We are handing you herein the entire chapter file and Court's action in connection therewith respecting the fraudulent dissolution of the above captioned corporation. It is conclusive from this record that a fraud was perpetrated upon this corporation as well as the Secretary of State necessitating a reinstatement of the original corporation which was chartered March 27, 1908.

"The record is sent to you with the request that you advise us whether or not in view of the condition of the record and the findings of the District and Appellate Courts the procedure for us to take in reinstating this charter or canceling out the attempted dissolution and subsequent charter. If this department would have the right to cancel the dissolution and charter, there would be nothing in the charter file of the original incorporation to disturb its legal entity.

"It is very apparent from this record that the members of the original corporation were fraudulently dealt with as well as the Secretary of

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State who acted upon the papers that were presented to him by the perpetrators. We therefore request to be advised as to how to unravel this tangled situation so that a proper certificate may be issued."

As we understand the file accompanying your inquiry, the facts are substantially as follows: The lodge known as the "Most Worshipful King Solomon Grand Lodge Ancient Free and Accepted Masons and Queen Esther Grand Chapter, Order of the Eastern Star and Daughters of the Sphinx" (the name set out in the charter) filed its charter in the office of the Secretary of State on the 27th day of March, 1908. The place of business of this association and its principal office was in the city of San Antonio, Bexar County, Texas. Since the filing of the original charter there have been several amendments to said charter filed in the office of the Secretary of State, each for the purpose of changing the place of business and its principal office. The last amendment was changing the place of business and principal office to the city of Houston, Harris County, Texas.

On the 9th day of October, 1936, the "Most Worshipful King Solomon Grand Lodge Ancient Free and Accepted Masons" (the name set forth in the charter) was filed in the office of the Secretary of State. The place of business of this corporation and its principal office was in Houston, Harris County, Texas. On the 8th day of May, 1939, this corporation filed an amendment to its original charter changing its name to the "Most Worshipful King Solomon Grand Lodge Ancient Free and Accepted Masons, and Queen Esther Grand Chapter, Order of the Eastern Star and Daughters of the Sphinx". The place of business of this association and its principal office was in the city of Houston, Harris County, Texas.

The corporation last mentioned also filed on the 9th day of October, 1936, an application of dissolution of the first corporation mentioned without its knowledge, consent or permission, and on the same date, the Secretary of State executed a certificate of dissolution of said corporation.

Later the first corporation filed a suit in the 127th Judicial District Court, Houston, Harris County, Texas, against the second named corporation alleging certain damages and for an injunction against the said second corporation enjoining it from using the name of the first corporation. In

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the trial of this case the court found that the plaintiff was entitled to a judgment for damages in the sum of \$10.00 and to a permanent injunction enjoining and restraining the defendants from further use or operation under the name of the "Most Worshipful King Solomon Grand Lodge, Ancient Free and Accepted Masons, Queen Esther Grand Chapter, Order of the Eastern Star and Daughters of the Sphinx". From this judgment the second corporation appealed to the Court of Civil Appeals, Galveston, Texas, and the judgment of the trial court by the Court of Civil Appeals was affirmed. An application for writ of error in this case was refused by the Supreme Court for want of merit.

The several modes in which a corporation may be dissolved are set forth in Article 1387, Vernon's Annotated Civil Statutes. One provision of this statute provides in effect that a corporation may be dissolved by action on the part of the stockholders indicating in the prescribed manner that the corporation shall be dissolved, followed by the issuance of a certificate of dissolution by the Secretary of State. Apparently this was the procedure followed by the second corporation purporting to be the first corporation when the application for dissolution was filed and the certificate of dissolution was issued by the Secretary of State.

The Attorney General is directed by the Constitution to seek a judicial forfeiture whenever a sufficient cause exists. Under the same constitutional provision the Attorney General is charged with the duty of preventing any private corporation from exercising any power not authorized by law. As to this clause, it has been held that the Attorney General is neither bound nor entitled to take action to enjoin a corporation from exceeding its legal powers where private rights alone are involved; but, where a forfeiture of its charter has been incurred by the corporation, it cannot be said that the State has no interest in the subject matter of litigation within the general rule that a party must have an interest in a suit. The function of instituting proceedings for forfeiture is vested in the Attorney General alone. His right or duty in this connection is exclusive; and therefore statutes which are purported to confer the power on others have been held to be unconstitutional. (Constitution, Article IV, Section 22; State v. Farmers Loan etc. Company, 17 S. W. 60; Tex. Jur. Volume 11, page 121).

As we understand your request you desire our opinion on the question, whether the Secretary of State has the legal right to cancel the certificate of dissolution heretofore mentioned and the charter of the second corporation.

Generally speaking public officers and governmental administrative boards possess only such powers as are expressly conferred upon them by law or necessarily implied from the powers so conferred. They cannot legally perform acts not authorized by existing law. It is stated in Texas Jurisprudence, Volume 34, page 443:

"Statutes which prescribe and limit the exercise of official duty are strictly construed in respect of the powers conferred and the manner of their exercise, and such powers are not to be enlarged by construction. But after a long period of time acts of officers will be liberally construed in favor of rights, support for which is claimed to be found in such acts. Specific, clear and direct grants or limitations of power in the Constitution are not controlled or annulled by general provisions found in other parts of the organic law. And where the Constitution defines the powers of an officer, he is confined to the powers enumerated, and the express mention of such powers negatives the existence of others.

"Implied powers.--It is equally well settled, however, that a law which confers a power or imposes a duty upon an officer or board carries with it by implication the authority to do such things as are reasonably necessary to carry into effect the power granted or the duty imposed. Thus power to do certain work or to accomplish a certain result which cannot otherwise be accomplished, implies the authority to employ such agents as may be reasonably necessary to accomplish the work or purpose specified, and to engage them for such length of time as is reasonably necessary."

With reference to the duties, powers and liabilities of public officers also see Ruling Case Law, Volume 22, page 455 and Corpus Juris, Volume 46, page 1014. We quote from Corpus Jurisprudence, Volume 46, page 1033 as follows:

"In the absence of statutory authority, an officer in performing a statutory duty which does

not involve the exercise of discretion is without the power of amendment; and when the judgment or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall, although the statute conferring authority expressly makes his determination discretionary. So the final decisions of public officers are binding upon their successors. However, officers may modify or change the usage or practice or methods previously adopted when such modification or change is given a prospective, and not a retroactive, operation."

In view of the foregoing it is our opinion that the Secretary of State has no legal right or authority to cancel the certificate of dissolution or the charter of the second corporation heretofore mentioned. It is stated in Texas Jurisprudence, Volume 11, page 119:

"Amendment or cancellation of the document is the appropriate remedy where the charter has been obtained by fraud,—that is to say, where there has been a breach of the legal conditions precedent to the grant." (Citing *W. L. Wells Co. v. Gastonia Cotton Mfg. Co.*, 198 U. S. 177, 25 Sup. Ct. 640).

In connection with the foregoing we want to point out that we have not found any statute authorizing the Secretary of State to cancel a certificate of dissolution regardless of how the same was obtained—whether through fraud or otherwise. For the same reason, it may be also stated that the Secretary of State has no authority to cancel the charter. The methods of procedure and the grounds upon which a charter of a private corporation may be cancelled are set out in the statutes applicable to the same.

The manner or method of procedure by which the first corporation heretofore mentioned may have its charter reinstated is to be determined by the corporation, and is a matter which this department has no legal authority to pass upon.

We are returning herewith all instruments accompanying your inquiry.

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Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:mp
Encl.

RECEIVED 25, 1945

Gerard E. Nease
ATTORNEY GENERAL OF TEXAS

